

Four Strategies to Help Keep You Out of Court

By Mui Kim Teh

School business officials and other education leaders worry now more than ever about facing legal battles. Maybe today's parents are more likely to run to the lawyer's office. Or maybe they simply expect everything to be a certain way—their way. Regardless, the result is the same: today's school leaders are likely to find themselves having to defend their actions in a legal arena.

Of course, the picture may vary from country to country, but when I examined trends across a range of education systems recently, there was no doubt that, overall, schools are experiencing more legal incidents than they were just a decade ago.

Naturally, one does not want to paint a bleak picture of briefcase-carrying lawyers rushing in and out of schools daily. However, there is a general sense of unease among educators that we must be careful about what we do because someone is waiting for the first opportunity to create legal difficulties for us.

It is in that climate that we have to be aware of legal risk and to find ways of reducing it to the lowest levels possible.

Common Approach

The best way to minimize any risk is to take no risk and therefore to do nothing! Although that may sound face-



tious, it is exactly what some schools have done, especially in relation to the risk of physical injury. They have stopped offering contact sports and may even be reluctant to allow teachers to reprimand students because of a possible backlash.

Fortunately, most schools take a more reasonable approach, simply exercising caution where it is needed most. But it is not quite as easy as simply being careful. When one thinks of everything that could possibly happen in a school, it is clear that educators need to have not only a good understanding of legal risk, but also a set of strategies to reduce their chances of running afoul of the law.

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The task may appear straightforward: bring principals and their teachers together and (a) inform them about legal matters relating to education and then (b) pinpoint a set of easy-to-apply actions for averting risk.

The first step, establishing awareness, is crucial. Sadly, that message has not reached some teacher-training institutions, and in some schools it may be considered the principal's concern. But some fundamental knowledge about the law as it relates to schools is essential because each day decisions must be made—sometimes on the spur of the moment—that could result in devastating consequences should things go awry.

The second step, identifying a set of “how-tos,” is problematic because not everyone views the issue from the same perspective, and that affects what they choose to do. Failing to account for different perspectives means that advice, strategies, and formulas for success will likely go in one ear and out the other.

My work has shown that we need to understand the “stories” that people typically tell about their situation before we can give convincing advice about what will work and what won't.

Diverse Perspectives

When I was in Singapore, I undertook some research with nearly 50 of the country's school principals. I asked them this question: What is the best way to minimize legal risk in your school? Although the answers I received differed, there were some patterns. The Q methodology approach I used enabled some complex factor analysis that showed that the principals' responses could be condensed into four summary responses, and that nearly all principals could be aligned with one of these points of view.

These four viewpoints can arguably be described as “solutions” to avoiding legal difficulties in our schools.

1. The “Training” Solution

The best way to reduce exposure to legal risk in schools is to ensure that people receive adequate training. All principals, vice principals, department heads, teacher leaders, counsellors, and other staff should be trained in how to avoid legal risk. However, having well-trained school leaders is most critical; therefore, principals should be the first to receive instruction.

Teachers should receive training in the correct course of action for any given situation, as well as in mediation skills, as arguments among parents and teachers can lead to legal consequences. The training process can be supported by such activities as conferences, a principals' forum, staff meetings, and student assemblies.

These training strategies should be complemented by other effective strategies, like giving advice to young teachers early in their careers, ensuring that teachers and students understand behavior policies and disciplinary procedures, and providing teachers with constant reinforcement about the legal implications of their actions.

Experience, however valuable, is no substitute for training, and we cannot rely on familiarity with the administrator's handbook to sort out our legal issues. Rather, we should provide the right training, spell out the correct procedures, and give staff the skills to develop good relationships among students, parents, and teachers.

2. The “Guidelines and Leadership” Solution

The optimal way to manage legal risk is to ensure that systems, processes, and broad guidelines are in place. Principals should spell out behavior policies and disciplinary procedures to teachers and students and make them aware of the correct courses of action.

Principals should also establish safety guidelines and disseminate them to everyone who works in their schools. Staff meetings and student assemblies to review safety rules will also help. School personnel should identify particularly dangerous areas, like physical education facilities and science labs, and monitor them closely. Standard operating procedures will help avert risk. They should also identify hazards and assess the risk of accidents. These assessments should be carefully documented.

The real key to running a relatively “risk-free” school is a strong principal—one who will give clear instructions and ensure compliance.

With good strong leadership, and some sensibly thought-out guidelines, schools should be able to manage and possibly even avoid legal risks.

3. The “Relationships” Solution

A key to managing legal risk lies in the quality of human relationships. For example, schools should maintain regular contact with parents, keep them informed, and look after the welfare of their teachers. Some training in mediation skills will also enhance relationships.

Despite teachers' clearly delineating their expectations to students, students do not always meet those expectations, so they may need to be periodically reminded of the consequences they face.

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Some understanding of the law is useful and, indeed, principals should be the first to receive such knowledge. But large-scale training, such as a university course, is unnecessary. Supervision measures, standard operating procedures, and rules are useful defense mechanisms only when relationships fail, so they are not the best ways for avoiding legal risk. Strong leaders can be suffocating if they simply issue directives, so they too are unlikely to be the best solution.

The government might do more to protect teachers and schools from the consequences of an increasingly litigious society, but, ultimately, the most effective strategies are those that are designed to nurture good,

meaningful, and sustainable relationships—characterized by common sense and sensitivity—among parents, students, and educators.

4. The “Blended” Solution

Implementing a judicious blend of strategies will help avert legal risk. Good relationships between students and teachers and regular contact with parents, combined with a concern for teachers' welfare, form a key platform for success in keeping things under control.

Relationships can be enhanced if educators have mediation skills to cope well when things go wrong. A district-, state-, or government-sponsored conference or principals' forum would support the training strategy, and the key personnel should be the main recipients of training in legal issues.

Although schools can adopt a range of effective strategies, the government should play its part by introducing legislation to prevent schools, teachers, and principals from being sued; it would be a major source of support in reducing the fear generated by legal risks. The Department of Education also has a significant role, for it can give clear advice and publish it, so schools have a ready source of reference. Better still would be a legal help desk.

Other strategies include identifying major accident hazards and problem areas, like physical education facilities and workshops, and then monitoring them

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and holding staff meetings and student assemblies to review rules. Reminding teachers of the major risk areas of school activity can reinforce this information.

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The principals' handbook is not the answer to avoiding legal risk, and we cannot rely on our common sense, sensitivity and honesty, nor on our predilection for the best interests of children; worthy attributes though they are, the harsh realities of contemporary school life call for a realistic range of strategies to avoid legal incidents.

Emerging Themes

Some interesting themes emerge from these strategies. The first is largely about the need for training; the second is about systems and procedures, combined with strong leadership. The third viewpoint emphasizes the need for strong relationships, but it also brings in the role of government in setting legislative standards. The fourth focuses on a range of strategies and emphasizes the need for the government to play its part.

By understanding the fundamentally different viewpoints, we can better communicate with people. For example, there is little point in extolling the virtues of training with someone who adheres to the relationships solution. He or she simply won't buy the arguments. Thus, this understanding enables us to "connect" with different people. If you advocate a particular line of argument for dealing with legal risk, you may be heard by only one group of teachers or principals, whereas others may close their ears or be dismissive.

In the real world, though, when we sit in front of a large group of teachers, school business officials, or other education leaders, their viewpoints may differ as much as the divergent themes presented here. How can you address legal risk in that situation?

One way may be to listen carefully to the key decision makers and understand their strategies. Although the stories in other contexts may not be quite the same as those that emerged in my research, it is not too difficult to understand if someone is persuaded by, say, rules and regulations, or by the need for systematic training. Solutions can then be discussed along those lines, but with some supporting solutions thrown in.

Another way is to try to gauge the "dominant" viewpoint and tailor your advice to that. Even though there may be several strategic preferences among any given group of educators or officials, there are probably only one or two that have wider acceptance. Then, it is possible to focus on key strategies that align with those views.

The point is, there is no right or wrong way to deal with legal risk. There are different strategies, some of which are more effective than others. But you will get nothing done in a school by advising school business officials and other education leaders to improve relationships with parents when they all believe that a rigid regulatory framework is the main way to prevent mishaps. So, I would say we should begin by working with key decision makers' preferences and then open their minds to other possibilities.

Another way of approaching legal risk management is to view it as a two-stage process: avoiding legal risks at the outset (training and guidelines solution) and then figuring out strategies to deal with legal issues (guidelines and relationships solutions).

Finally . . .

My research has shown that whatever approach is adopted to minimize legal risk, it is useful to know that different people see the world in different ways, and educators, school business officials, and other education leaders are no exception. Although the temptation may be to sigh and ask why others cannot see it your way, the best way to effect change for the better is to win people's hearts and minds, and if you are going to do that, you need to understand their point of view.

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